THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 14223 of 2001

O r d e r:

The petitioner, initially was appointed as Constable with the Central Industrial Security Force in 1971. He was later promoted to the posts of Head Constable, Assistant Sub-Inspector and Sub-Inspector. While he was working at Vizag Steel Plant, the respondents issued a charge memo dated 15.05.2000, to which the petitioner submitted his explanation. Dissatisfied with the explanation, the respondents ordered an enquiry and appointed an Inspector as Enquiry Officer. Based on the report of the Enquiry Officer, which reported the charges leveled against the petitioner as proved, respondent No.2 vide orders dated 28.11.2000 imposed punishment of reduction to the lower stage in the time scale of pay for a period of two years. Assailing this order, the petitioner preferred appeal before respondent No.1, who by reason of the order dated 26.03.2001, impugned in this writ petition, dismissed the same.

Heard the learned counsel for the petitioner and the learned Assistant Solicitor General for the respondents.

The learned counsel for the petitioner submits that the officer appointed to enquire into the charges leveled against the petitioner is an Inspector, and he being a subordinate to the Commandant, who is a witness to the incident, would be influenced and would not conduct the enquiry impartially, and though the petitioner objected to the appointment of an Inspector as Enquiry Officer, yet the respondents proceeded with the enquiry. He submitted that the enquiry was conducted in violation of the principles of natural justice, for no opportunity whatsoever was given to the petitioner to cross-examine the labouerers who deposed by way of affidavits before the Deputy Commandant, though a request in that regard was made by the petitioner to the Enquiry Officer. He submitted that in the enquiry conducted against Sri. T.K. Rao, Constable, in relation to the very same incident, the Enquiry Officer found that the charge not proved, and as the charge leveled against the petitioner, arises out of the very same incident, the Enquiry Officer cannot give a finding that the charge is proved. He submits that there cannot be two different findings by two different Enquiry Officers against the charges arising out of a common incident. He submitted that the findings arrived at in the enquiry and the orders passed by the primary and appellate authority as based on no evidence, and at any rate, there can be no two punishments, one reduction in pay and another suspension by way of punishment for the very same incident, which is not as per the Rules, and prayed that the impugned orders, be set aside.

The respondents filed counter. The learned Assistant Solicitor General reiterating the counter averments submitted that petitioner neither assailed the disciplinary proceedings nor the punishment imposed by the disciplinary authority. He denied the contention of the petitioner that no opportunity whatsoever was given to him to cross-examine the two labourers. As the charge leveled against the petitioner stood proved in the enquiry, the disciplinary authority imposed punishment of reduction of pay by one stage for a period of two years without cumulative effect, and treated the suspension period of 13 days as on suspension, which was confirmed in appeal by the appellate authority. The petitioner having not shown any illegality in the impugned orders no interference is warranted therewith, and more so when it is not the case of the petitioner that the punishment imposed by the disciplinary authority, as confirmed in appeal, is disproportionate to the charge leveled. Hence prayed that the writ petition be dismissed.

The contention of the petitioner that inasmuch as Commandant is a witness to the incident, the respondents could not have appointed an Inspector, who is a subordinate to the Commandant, as an Enquiry Officer, cannot be accepted, for the reason that it is the specific case of the respondents that the Commandant was not listed as a witness in the enquiry and this is evident from the enquiry itself. When the Commandant was not listed as a witness, I fail to understand how the Inspector, who is subordinate to the Commandant, would be influenced. It is not the case of the petitioner that the Inspector is subordinate to him or that the Inspector was influenced by the Commandant to give a negative report in favour of the petitioner. It is not even his case that the Enquiry Officer was inimical to him or had acted in a biased and prejudicial manner under the influence of the Commandant, affecting him in the enquiry adversely. At any rate, as the Commandant having not been listed as a witness, no exception can be taken to action of the respondents in rejecting the request of the petitioner for change of Enquiry Officer.

Though the petitioner contends that the enquiry is vitiated because the Enquiry Officer has not given him opportunity to cross-examine the two labourers who deposed by way of affidavits before the Deputy Commandant, it is the specific case of the respondents that the Enquiry Officer in spite of giving ample opportunities to the petitioner to defend his case himself or by getting appointed any member of the force as his defence assistant, did not do so, and this is even evident from the order of the appellate authority, who recorded that no request for cross-examining the two labourers was made by the petitioner during the course of the enquiry. This being the stand of the respondents, the petitioner cannot be allowed to contend that no opportunity was given to him to cross-examine the two labourers, and more so when petitioner did not challenge the enquiry proceedings.

The contention of the petitioner that inasmuch as in the enquiry conducted against Sri. T.K. Rao, Constable, the Enquiry Officer found the charge not proved, while the Enquiry Officer, who conducted the enquiry against the petitioner in respect of a charge arising out of same incident, held proved, and there cannot be two different opinions of two different Enquiry Officers, in respect of the charges arising out of the same incident, is bereft of any merit, for the reason that the charges leveled against the petitioner and

Sri. T.K. Rao, Constable, though arise out of the same incident, are different. In that the charge leveled against the petitioner is that he failed to control/supervise his shift personnel, while the charge leveled against Sri. T.K. Rao, Constable, is that he had allowed two labourers to enter into the plant illegally without any valid documents. The charges leveled against the petitioner and
Sri. T.K. Rao, Constable, though arise of the same incident, they being different, certainly the findings of the Enquiry Officers, would be different, and the petitioner cannot expect the findings of the Enquiry Officers, who enquired into two different charges, to be one and the same.

Be that as it may, the petitioner was entrusted with the duties of controlling/supervising the personnel. On the date of the incident, for lack of supervision by the petitioner, one of the Constables, who was posted at BC Gate, had allowed two labourers without valid documents into a prohibited area. The act of lack of supervision by the petitioner, was found to be dereliction of duty and was not expected from a member of a disciplined force. In the enquiry, the charge leveled against the petitioner stood proved, and based on the enquiry report and considering the gravity of the proved charge, the disciplinary authority imposed punishment of reduction of pay by one stage for a period of two years without cumulative and treated the period of suspension as suspension period, which in appeal was confirmed by the impugned order, and more so having regard to the fact that the enquiry was conducted in accordance with the laid down procedure.

The contention of the petitioner that reducing the pay by one stage for a period of two years and treating the period of suspension as suspension, would amount to imposing two punishments for single offence cannot be accepted. As the charge leveled against the petitioner stood proved, the disciplinary authority while imposing punishment of reduction of pay by one stage for a period of two years without cumulative effect felt not to regularize the period of suspension, and accordingly treated the period of suspension as on suspension, and it cannot be said that the respondents had imposed two punishments for one single offence.

In **V. Ramana v. A.P.SRTC**, the apex Court held that the Court should not interfere with the administrator's decision unless it is illogical or suffers from procedural impropriety or is shocking to the conscience of the Court, in the sense that it is in defiance of logic or moral standards. In the instant case, given the nature of duties and responsibilities entrusted to the petitioner, who holds the post of Sub-Inspector in a disciplined force, and considering the charge leveled against the petitioner, namely failure to supervise the personnel, which resulted in two persons intruding into a prohibited area, which stood proved in the enquiry, I am of the considered opinion that the punishment imposed by the disciplinary as confirmed in appeal, in no manner can be said to be harsh or one shocking to the conscience of the Court, warranting interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India, and more so when petitioner did not plead the proportionality of the punishment imposed.

The writ petition is devoid of merit, and the same is accordingly dismissed. No costs.

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N.V. RAMANA, J.

Date: 21st February, 2006.